

Message Text

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UNCLAS GENEVA 4895

FROM KEARNEY

E.O. 11652: NA

TAGS: OGEN

SUBJ: ILC ARTICLES ON SUCCESSION TO TREATIES

REF: STATE 149473, GENEVA 4427

THERE FOLLOWS ARTICLE 27 ON SUCCESSION OF STATES TO TREATIES IN CASES OF SEPARATION OF PARTS OF A STATE AS ADOPTED IN FINAL FORM BY INTERNATIONAL LAW COMMISSION. IT SHOULD BE NOTED THAT DISTINCTION IN ORIGINAL DRAFT ARTICLES BETWEEN CASES OF DISSOLUTION AND SEPARATION HAS BEEN DISCARDED. GENERAL RULE NOW IS ONE OF CONTINUITY UNLESS SEPARATION OF TERRITORY OCCURS IN CIRCUMSTANCES ESSENTIALLY OF THE SAME CHARACTER AS CASE OF A NEWLY-INDEPENDENT STATE. AM INCLUDING ARTICLE 28 ALSO TO GIVE FULL PICTURE.
QUOTE: ARTICLE 27 SUCCESSION OF STATES IN CASES OF SEPARATION OF PARTS OF A STATE.

1. WHEN A PART OR PARTS OF THE TERRITORY OF A STATE SEPARATE TO FORM ONE OR MORE STATES, WHETHER OR NOT THE PREDECESSOR STATE CONTINUES TO EXIST:

(A) ANY TREATY IN FORCE AT THE DATE OF THE SUCCESSION OF STATES IN RESPECT OF THE ENTIRE TERRITORY OF THE PREDECESSOR STATE CONTINUES IN FORCE IN RESPECT OF EACH SUCCESSOR STATE SO FORMED;

(B) ANY TREATY IN FORCE AT THE DATE OF THE SUCCESSION OF STATES IN
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RESPECT ONLY OF A PART OF THE TERRITORY OF THE PREDECESSOR STATE

THAT HAS BECOME A SUCESSOR STATE CONTINUES IN FORCE IN RESPECT OF THAT SUCESSOR STATE ALONG.

2. PARAGRAPH 1 DOES NOT APPLY IF:

(A) THE STATES CONCERNED OTHERWISE AGREE; OR

(B) IT APPEARS FROM THE TREATY OR IS OTHERWISE ESTABLISHED THAT THE APPLICATION OF THE TREATY IN RESPECT OF THE SUCCESSOR STATE WOULD BE INCOMPATIBLE WITH ITS OBJECT AND PURPOSE OR WOULD RADICALLY CHANGE THE CONDITIONS FOR THE OPERATION OF THE TREATY.

3. NOTWITHSTANDING PARAGRAPH 1, IF A PART OF THE TERRITORY OF A STATE SEPARATES FROM IT AND BECOMES A STATE IN CIRCUMSTANCES WHICH ARE ESSENTIALLY OF THE SAME CHARACTER AS THOSE EXISTING IN THE CASE OF THE FORMATION OF A NEWLY INDEPENDENT STATE, THE SUCESSOR STATE SHALL BE REGARDED FOR THE PURPOSES OF THE PRESENT ARTICLE IN ALL RESPECTS AS A NEWLY INDEPENDENT STATE.

ARTICLE 28 POSITION IF A STATE CONTINUES AFTER SEPARATION OF PART OF ITS TERRITORY.

WHEN, AFTER SEPARATION OF ANY PART OF THE TERRITORY OF A STATE, THE PREDECESSOR STATE CONTINUES TO EXIST, ANY TREATY WHICH AT THE DATE OF THE SUCCESSION OF STATES WAS IN FORCE IN RESPECT OF THE PREDECESSOR STATE CONTINUES IN FORCE IN RESPECT OF ITS REMAINING TERRITORY UNLESS:

(A) IT IS OTHERWISE AGREED:

(B) IT IS ESTABLISHED THAT THE TREATY RELATED ONLY TO THE TERRITORY WHICH HAS SEPARATED FROM THE PREDECESSOR STATE; OR

(C) IT APPEARS FROM THE TREATY OR IS OTHERWISE ESTABLISHED THAT THE APPLICATION OF THE TREATY IN RESPECT OF THE PREDECESSOR STATE WOULD BE INCOMPATIBLE WITH ITS OBJECT AND PURPOSE OR WOULD RADICALLY CHANGE THE CONDITIONS FOR THE OPERATION OF THE TREATY.

ARTICLE 28. BIS PARTICIPATION IN TREATIES NOT IN FORCE AT THE DATE OF THE SUCCESSION OF STATES IN CASES OF SEPARATION PARTS OF A STATE

1. SUBJECT TO PARAGRAPHS 3 AND 4, A SUCCESSOR STATE FALLING WITHIN ARTICLE 27, PARAGRAPH 1, MAY BY GIVING NOTICE, ESTABLISH ITS STATUS AS CONTRACTING STATE TO A MULTILATERAL TREATY WHICH IS NOT IN FORCE IF, AT THE DATE OF THE SUCCESSION OF STATES, THE PREDECESSOR STATE WAS A CONTRACTING STATE TO THE TREATY AND THE TREATY, IF IT UNCLASSIFIED

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HAD BEEN IN FORCE AT THAT DATE, WOULD HAVE APPLIED IN RESPECT OF THE TERRITORY TO WHICH THE SUCCESSION OF STATES RELATES.

2. SUBJECT TO PARAGRAPHS 3 AND 4, A SUCESSOR STATE FALLING WITHIN ARTICLE 27, PARA 1, MAY BY GIVING NOTICE, ESTABLISH ITS STATUS AS A PARTY TO A MULTILATERAL TREATY WHICH ENTERS INTO FORCE AFTER THE DATE TO A MULTILATERAL TREATY WHICH ENTERS INTO FORCE AFTER THE DATE OF THE SUCCESSION OF STATES IF AT THAT DATE THE

PREDECESSOR STATE WAS A CONTRACTING STATE TO THE TREATY AND THE TREATY, IF IT HAD BEEN IN FORCE AT THAT DATE, WOULD HAVE APPLIED IN RESPECT OF THE TERRITORY TO WHICH THE SUCCESSION OF STATES RELATES.

3. PARAS 1 AND 2 DO NOT APPLY IF IT APPEARS FROM THE TREATY OR IS OTHERWISE ESTABLISHED THAT THE APPLICATION OF THE TREATY IN RESPECT OF THE SUCCESSOR STATE WOULD BE INCOMPATIBLE WITH ITS OBJECT AND PURPOSE OR WOULD RADICALLY CHANGE THE CONDITIONS FOR THE OPERATION OF THE TREATY.

4. IF THE TREATY IS ONE FALLING WITHIN THE CATEGORY MENTIONED IN ARTICLE 12, PARA 3, THE SUCCESSOR STATE MAY ESTABLISH ITS STATUS AS A PARTY OR AS A CONTRACTING STATE TO THE TREATY ONLY WITH THE CONSENT OF ALL THE PARTIES OR OF ALL THE CONTRACTING STATES.

ARTICLE 28 TER PARTICIPATION IN CASES OF SEPARATION OF PARTS OF A STATE IN TREATIES SIGNED BY THE PREDECESSOR STATE SUBJECT TO RATIFICATION, ACCEPTANCE OR APPROVAL

1. SUBJECT TO PARAS 2 AND 3, IF BEFORE THE DATE OF THE SUCCESSION OF STATES THE PREDECESSOR STATE HAD SIGNED A MULTILATERAL TREATY SUBJECT TO RATIFICATION, ACCEPTANCE OR APPROVAL AND THE TREATY, IF IT HAD BEEN IN FORCE AT THAT DATE, WOULD HAVE APPLIED IN RESPECT OF THE TERRITORY TO WHICH THE SUCCESSION OF STATES RELATES, A SUCCESSOR STATE FALLING WITHIN ARTICLE 27, PARA 1, MAY RATIFY, ACCEPT OR APPROVE THE TREATY AS IF IT HAD SIGNED THAT TREATY AND MAY THEREBY BECOME A PARTY OR A CONTRACTING STATE TO IT.

2. PARA 1 DOES NOT APPLY IF IT APPEARS FROM THE TREATY OR IS OTHERWISE ESTABLISHED THAT THE APPLICATION OF THE TREATY

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IN RESPECT OF THE SUCCESSOR STATE WOULD BE INCOMPATIBLE WITH ITS OBJECT AND PURPOSE OR WOULD RADICALLY CHANGE THE CONDITIONS FOR THE OPERATION OF THE TREATY.

3. IF THE TREATY IS ONE FALLING WITHIN THE CATEGORY MENTIONED IN ARTICLE 12, PARA 3, THE SUCCESSOR STATE MAY BECOME A PARTY OR A CONTRACTING STATE TO THE TREATY ONLY WITH THE CONSENT OF ALL THE PARTIES OR OF ALL THE CONTRACTING STATES.
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